National Energy Board

Office national de l'énergie

Application to Participate(A67605)

Filing Date: 2015-03-02

Hearing Information

Project Name: Energy East Project and Asset Transfer

Company: Energy East Pipeline Ltd.

File Number: OF-Fac-Oil-E266-2014-01 02

I am Applying as:

- ○ An Individual
- ○ Authorized Representative on Behalf of an Individual
- ◉ A Group

Select which one best describes your group:

- ○ Company
- ○ Association (Special Interest Group)
- ◉ Aboriginal
- ○ Federal Government
- ○ Provincial Government
- ○ Territorial Government
- ○ Municipal Government
- ○ Others

- ◉ My group is an organization that will represent its own interests
- ○ My group is a collection of individuals with common interest

Contact Information:

- If you apply as individual, the contact information is for the Person Applying to Participate.
- If you apply as Authorized Representative, the contact information is for the Individual you are representing.
- If you apply as Group, the contact information is for the Group's main contact.

Salutation: Legal Counsel	
Last Name: McClurg	
First Name: Michael	
Title: Lawyer	Address: 250 University Ave., 8th Floor Toronto, Ontario M5H 3E5 Canada
Organization: Wahgoshig First Nation	
Telephone: 416-981-9341	
Facsimile: 416-981-9350	
Email Address: mmcclurg@oktlaw.com	

Authorized Representative(s) Information:

If you do not have an authorized representative this section will be blank.

Salutation: Chief	
Last Name: Babin	
First Name: David	
Title:	Address: R.R. #3 Matheson, Ontario P0K 1N0 Canada
Organization: Wahgoshig First Nation	
Telephone: 705-273-2055	
Facsimile: 705-273-2900	
Email Address: wfnchief@wahgoshigfirstnation.com	
Salutation: Legal Counsel	
Last Name: Kempton	
First Name: Kate	
Title: Lawyer	Address: 250 University Ave., 8th Floor Toronto, Ontario M5H 3E5 Canada
Organization: Olthuis Kleer Townshend LLP	
Telephone: 416-981-9374	
Facsimile: 416-981-9350	
Email Address: kkempton@oktlaw.com	

Method of Participation

I wish to participate as a:

- ○ Commenter
- ⊙ Intervenor

Interest or Expertise

- ☑ The Group I am representing is **directly affected** by the proposed Project
- ☑ The Group I am representing has **relevant information or expertise**

Connection to Project Issues

7. The potential environmental and socio-economic effects of the Project, including the environmental effects of accidents or malfunctions that may occur in connection with the project, and any cumulative effects that are likely to result from the Project, as considered under the *Canadian Environmental Assessment Act, 2012*
9. The appropriateness of the general route and land requirements for the Project
10. The engineering design and integrity of the Project
11. Potential impacts of the Project on Aboriginal interests
13. Safety and security associated with the construction and operation of the Project, including emergency response planning and third-party damage prevention
14. Contingency planning for spills, accidents, or malfunctions during construction and operations of the Project
15. Financial implications of contingency planning for spills, accidents, or malfunctions during construction and operations of the Project
16. The terms and conditions to be included in any recommendation or approval the Board may issue for the Project

Aboriginal Interest/Environmental/Socio-economic Concerns:

Wahgoshig First Nation ("WFN") occupies a reserve of approximately 19,239 acres on the shore of Abitibi Lake, near the town of Matheson, Ontario. WFN's traditional territory ("WFN Territory") covers a vast area throughout Ontario. WFN is a 1906 signatory to Treaty # 9 and has Aboriginal and treaty rights guaranteed under s. 35 of the Constitution ("Rights"). WFN members currently use, and have since time immemorial used, the land and waterways in WFN Territory to fish, hunt, trap, and for other purposes. These practices are constitutionally protected rights and have been recognized by the courts (see Wahgoshig First Nation v. Ontario, 2011 ONSC 7708). Of particular significance to WFN are the watershed and connected waterways in WFN Territory, including Lake Abitibi. The waterways in WFN Territory are vital to the Rights and cultural practices of WFN, which are central to WFN's identity as a people.

The Energy East pipeline will directly affect WFN, as it is proposed to cross directly through WFN Territory in which the watershed that is so vital to WFN's Rights is located. Three pumping stations are also proposed to be built within WFN Territory. The pipeline is proposed to pass within 34.6 kms of the WFN reserve, where many WFN members live. The project area is regularly used by WFN members to practice their Rights. The construction/conversion of the pipeline and infrastructure, and any potential leak, spill, or other accident related to the operation of the Project will directly affect WFN Territory and are of great concern to WFN. A bitumen spill could be catastrophic for WFN's ability to practice its Rights, and there is great concern in the community that leaked or spilt bitumen would pollute the watershed on which WFN relies, and flow directly into the WFN community. Construction/conversion of the pipeline may impact sacred and cultural sites, as well as wildlife and plants/medicines on which WFN depends.

WFN Elders and land-users have expertise regarding the traditional uses of the land and waterways in WFN Territory. They also have expertise on the location of WFN cultural sites in the area of the Project. WFN's submissions to the Board, including the evidence of these Elders and land-users will inform the Board of the potential impacts the Project will have on: WFN Rights, the ability of WFN members to practice traditional lifestyles, and on WFN Territory. WFN also intends to file evidence from environmental technical experts to elaborate on WFN-specific concerns and potential mitigation measures.

Route/Design/Safety/Integrity/Spill Contingency:

In addition to the evidence/submissions discussed above, WFN is collaborating with various other First Nation participants to jointly retain experts. Through this arrangement, WFN will have access to expertise on pipeline safety and integrity, design, and emergency response and cost. Further, WFN has jointly retained a leading expert (Dr. Jeffrey Short) on the behaviour of diluted bitumen in waterways to advise and file evidence on the potential impacts of a spill on the Territory. WFN will be filing this evidence with the Board.

Access, Notification and Service

Which official language do you wish to use in correspondence with the Board and at the public hearing?	English ☑ French ☐

Documents submitted electronically are available on the Board's electronic document repository, (Click 'View' under 'Regulatory Documents' at www.neb-one.gc.ca). If you have the capability to access the repository, the Board and other Participants in this proceeding may serve you by notifying you that a document has been filed and is available in the repository, instead of serving you with a hard copy of the document.

Are you able to access the Board's electronic document repository? Yes ☑ No ☐

Notification by email advising that a document has been filed will be sent to the following email addresses:

David Babin [wfnchief@wahgoshigfirstnation.com]
Kate Kempton [kkempton@oktlaw.com]
Michael McClurg [mmcclurg@oktlaw.com]